

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara Valley
Transportation Authority for an order
authorizing construction of an at-grade crossing
of Hamilton Avenue (82D-5.6) by the light rail
transit line of the Vasona Light Rail Project in the
City of Campbell, County of Santa Clara.

Application 01-01-003
(Filed January 5, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
MOTION TO WITHDRAW AND DEALING WITH OTHER MATTERS**

A second Prehearing Conference (PHC) was conducted in this application on April 23, 2002, to resolve procedural issues. This ruling addresses several of these issues.

1. Motion to Withdraw

Santa Clara Valley Transportation Authority (VTA) moves to withdraw its Application (A.) 01-01-003 for an order authorizing construction of an at-grade crossing of Hamilton Avenue in the City of Campbell. Based in part on objections of the Rail Crossing Engineering Section of the Commission's Rail Safety and Carriers Division (Staff), VTA states that it has decided to cross Hamilton Avenue by an aerial grade separation and has abandoned its earlier plan to cross at grade. Because of this, VTA asks that the application be withdrawn and this proceeding closed. The motion to withdraw is opposed by Staff.

The motion follows a ruling by the Administrative Law Judge (ALJ) on March 1, 2002, denying VTA's earlier motion to dismiss the application on

grounds that the Commission lacks jurisdiction to regulate or restrict the placement of a government agency's light rail tracks. VTA states that its current intention is to continue to assert its argument that the Commission lacks jurisdiction over the placement of its rail crossings and, if this application is withdrawn, VTA may consider constructing the Hamilton Avenue crossing without Commission approval.

Staff contends that "if Applicant is permitted to withdraw its [a]pplication and proceed with its present plans for a grade separation without first receiving formal Commission approval, Applicant will have circumvented the Commission's crossing jurisdiction. In that case, Applicant will have avoided Commission safety oversight just as effectively as if Applicant had successfully prosecuted its original claim that the Commission had no jurisdiction over its crossings." (Staff Opposition, at 3-4.)

VTA's motion to withdraw its application is denied. The Commission cannot condone the possibility of a procedural end run around the Commission's obligations to protect public safety at rail crossings. (*See, e.g., Southern California Water Company* (1985) 17 CPUC2d 720 (denying motion to withdraw rate application following staff recommendation for rate decrease); *In re Drinking Water Quality*, Decision (D.) 00-11-036 (Commission's ability to discharge its own responsibilities should not be thwarted); *see also, Chadbourne v. Superior Court* (1964) 60 Cal.2d 723, 731.)

2. Hearing Set June 27 and 28, 2002

VTA was invited at the April 23 PHC to amend its application to reflect an aerial crossing rather than an at-grade crossing at Hamilton Avenue. VTA counsel indicated a need to confer with the agency before it could consider filing

an amendment or taking other action to reach a final decision in this matter. Staff proposed that the matter be set for hearing. While hearing dates of June 19 and 20 were considered, the Commission's calendar will not accommodate those dates. Accordingly, an evidentiary hearing is set for 10 a.m. on Thursday, June 27 and Friday, June 28, 2002, in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. Parties will exchange concurrent written testimony on June 7, 2002, with an exchange of written rebuttal testimony on June 18, 2002. A Scoping Memo will issue after it is known whether an amended application will be filed. VTA is directed to notify the ALJ and parties promptly when a decision on amendment has been reached.

3. Motion to Intervene

The Borello Neighborhood Committee (Committee), purporting to represent homeowners north of and adjacent to the Hamilton Avenue crossing, seeks to intervene in this proceeding as an interested party. VTA opposes the motion on grounds that the Committee has not identified its members or their precise location. Under Rule 54 of the Rules of Practice and Procedure, participation in application proceedings will be granted if there is full disclosure of the interests represented and participation will not unduly broaden the issues presented. The petition to intervene is granted and the Committee will be added to the service list for this proceeding. However, the Committee is directed, within 30 days of the date of this ruling, to provide all parties with a list of its members and the locations of their homes. If this presents a problem of privacy or other concern, the Committee may file a motion for a protective order or other appropriate relief.

4. Amendments to A.01-03-038

VTa and Staff are also parties to A.01-03-038. At the PHC on April 23, they represented that VTA's amendments to A.01-03-038 may have resolved all issues in that application, with the exception of VTA's jurisdictional argument, which may or may not be part of A.01-03-038. As agreed at the PHC, VTA will serve copies of its two most recent amendments of A.01-03-038 on all parties and on the ALJ. Staff, after review and consultation with VTA, will file either a written withdrawal of protest or a revised statement of protest in A.01-03-038. If VTA and Staff reach agreement on issues in A.01-03-038, and if the amended application conforms to the requirements of Pub. Util. Code §§ 1201-1220, a Proposed Decision in A.01-03-038 will be issued promptly.

IT IS RULED that:

1. The motion of Santa Clara Valley Transportation Authority (VTA) to withdraw Application (A.) 01-01-003 is denied.
2. An evidentiary hearing in A.01-01-003 will be held beginning at 10 a.m. Thursday, June 27, 2002, and Friday, June 28, 2002, in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California
3. VTA is directed to notify the parties and the Administrative Law Judge (ALJ) promptly when it has reached a decision on amending A.01-01-003.
4. The motion of the Borello Neighborhood Committee (Committee) to intervene in A.01-01-003 is granted.
5. Committee is directed within 30 days to provide all parties with a list of its members and the locations of their homes.
6. VTA is directed to serve copies of its amended applications in A.01-03-038 on the ALJ and on all parties in A.01-01-003.

7. The Rail Crossing Engineering Section of the Rail Safety and Carriers Division is directed to withdraw or restate its protest to A.01-03-038 following consultation with VTA.

Dated April 29, 2002, at San Francisco, California.

/s/ GLEN WALKER
Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Withdraw and Dealing With Other Matters on all parties of record in this proceeding or their attorneys of record.

Dated April 29, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.